

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

BILLY JOE WINROW,)	
)	
Petitioner,)	
)	
v.)	No. CIV-21-375-R
)	
JANET DOWLING,)	
)	
Respondent.)	

ORDER

On July 19, 2021, the Honorable Magistrate Judge Shon T. Erwin issued a Report and Recommendation—Doc. No. 14—recommending that the Court dismiss Petitioner’s action. Petitioner filed an objection to the Report and Recommendation in Doc. No. 15.

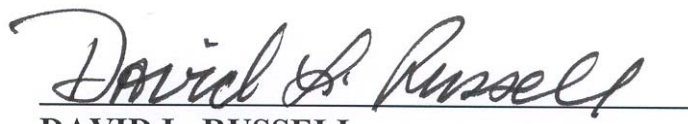
In the Report and Recommendation, Judge Erwin reasoned that though he characterized his claim as a Petition under Section 2241, Petitioner’s request clearly challenged “the *fact* of his confinement” rather than “the *nature* of [his] confinement[.]” Doc. No. 14, pp. 2–3 (quoting *Prost v. Anderson*, 636 F.3d 578, 581 (10th Cir. 2011) (emphasis in original)). Further, Judge Erwin explained that when a petitioner challenges the validity of his conviction and not the nature of his confinement, as Petitioner has here, the proper avenue for relief is an action under Section 2254, not Section 2241. *Id.* Accordingly, Judge Erwin recommended the Court dismiss Petitioner’s action because it is clear from the face of the Petition he is not entitled to relief. *Id.* p. 1. Additionally, Judge Erwin noted that Petitioner previously filed two petitions for habeas relief under Section

2254, thus, the Court cannot consider a third petition without the Tenth Circuit's authorization. *Id.* p. 2, n. 3.

In his objection to the Report and Recommendation, Petitioner argues that he is challenging the execution of his sentence, invoking Section 2241, because the court in which he was convicted lacked jurisdiction. Doc. No. 15, p. 2. He provides no other justification for pursuing relief under Section 2241. Petitioner's argument lacks merit because the Tenth Circuit has clearly stated—as Judge Erwin explained—that a challenge to a state court's jurisdiction is an “attack[s] on [a] conviction and sentence” that must be brought under Section 2254. Doc. No. 14, p. 3 (quoting *Yellowbear v. Wyo. Atty. Gen.*, 525 F.3d 921, 924 (10th Cir. 2008)). Accordingly, because Petitioner does not allege any facts challenging “the *execution* of his sentence or the nature of his confinement[,]” Section 2241 is an inappropriate avenue for relief and the Petition is subject to dismissal.¹

For the reasons stated above, Judge Erwin's Report and Recommendation—Doc. No. 14—is hereby ADOPTED IN ITS ENTIRETY. Accordingly, Petitioner's action is hereby DISMISSED.

IT IS SO ORDERED on this 2nd day of September 2021.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

¹ Dismissing the Petition renders moot Petitioner's pending motions, Doc. Nos. 7 and 13.